

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE-OPELOUSAS DIVISION**

PAULA LE	*	CIVIL ACTION NO.:
	*	
VERSUS	*	JUDGE
	*	
UNUM LIFE INSURANCE COMPANY	*	MAG. JUDGE
OF AMERICA	*	
* * * * *	*	* * * *

NOTICE OF REMOVAL

TO: PAULA LE
Through her attorney of record
Patrick C. Morrow
Morrow, Morrow, Ryan, Bassett & Haik
Post Office Drawer 1787
Opelousas, LA 70571

PLEASE TAKE NOTICE that Unum Life Insurance Company of America (“Unum”), defendant in the proceeding entitled “*Paula Le vs. Unum Life Insurance Company of America*,” Number C-172252A on the docket of the 27th Judicial District Court for the Parish of St. Landry, State of Louisiana, on June 28, 2017 filed in the United States District Court, Western District of Louisiana, its Notice to effect the removal of said Civil Action to the United States District Court for the Western District of Louisiana.

Unum respectfully represents that the grounds for removal are as follows:

I.

The cause bearing the above captioned title which is entitled “*Petition*” (“Petition”) was originally filed in the 27th Judicial District Court for the Parish of St. Landry, State of Louisiana, Docket No. C-172252A on May 11, 2017.

II.

Service for Unum was made on May 30, 2017 by the East Baton Rouge Sheriff’s Office through personal service to the Secretary of State.

III.

It has been less than thirty days since the citation directed to defendant in the State Court proceeding was served upon the defendant. Removal of this claim is, therefore, timely pursuant to 28 U.S.C. § 1446(b).

IV.

A copy of the original Petition with citation showing service on Unum is annexed to this Notice of Removal in accordance with the provisions of 28 U.S.C. § 1446 and is identified as **Exhibit “A.”**

V.

The aforesaid Petition alleges that plaintiff is entitled to disability benefits “under a disability plan written through her employer, Opelousas General Health System (“OGHS”), with defendant, Unum Life Insurance Company”, together with penalties and attorney’s fees.¹

¹ Petition Par. 4, 8 and prayer.

V.

Unum bases this Notice of Removal on 28 U.S.C. §1441, 28 U.S.C. §1331, because Plaintiff's claim is for benefits under an employee welfare benefit plan governed by the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. §1001, *et seq.* ("ERISA").

VI.

On information and belief, as an employee of OGHS, Paula Le was a participant in an employee welfare benefit plan sponsored by her employer for its eligible employees ("OGHS Plan"). Long term disability benefits under the Plan were funded by a group long term disability policy, no. 142867 002 issued by Unum to OGHS, attached as "**Exhibit B.**" ERISA information is contained in Exhibit B at pgs. UA-CL 000002, 000034-000036.

VII.

The above-described action is one over which the United States District Court also has original jurisdiction pursuant to 29 U.S.C. §1132 and 28 U.S.C. §1331, inasmuch as the matter involves a claim for benefits under an employee welfare benefit plan, which was established pursuant to the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. §1001, *et seq.* ("ERISA"). The definition of an employee group benefit plan is set forth at 29 U.S.C. §1002(3) which states:

The term 'employee benefit plan' or 'plan' means . . . an employee welfare benefit plan or an employee pension benefit plan or a plan which is both an employee welfare benefit plan and an employee pension plan.

The term "employee welfare benefit plan" is defined as:

. . .any plan, fund, or program . . .established or maintained by an employer . . .to the extent that such plan, fund or program was established or is maintained for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise, (A) medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability death . . .

Id. §1002(1).

VIII.

OGHS was created pursuant to a trust instrument and the Louisiana Supreme Court has determined that it is not a political subdivision of the State of Louisiana. *Bertrand v. Sandoz*, 260 La. 239, 255 So. 2d 754 (La. 1971). OGHS is financially autonomous from any governmental entity; is not responsible for the debts of any governmental entity; does not receive funds from any governmental entity; operates its own payroll and established its own independent employee welfare benefit plan providing benefits to its employees.

IX.

ERISA preempts the state law claims contained in the Petition and provides the exclusive remedy when a plaintiff seeks to recover benefits under an employee welfare benefit plan. ERISA §§502(a)(1)(B) and 514, 29 U.S.C. §§1132(a)(1)(B) and 1144; see *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41 (1987) and *Aetna Health, Inc. v. Davila*, 542 U.S. 200 (2004). Therefore, this court has original federal question jurisdiction over this action pursuant to 28 U.S.C. §1331. As an action of a civil nature founded on a claim or right arising under the laws of the United States, this action is being removed to the United States District Court for the Western District of Louisiana pursuant to the provisions of 28 U.S.C. §1441(a) and (b).

X.

Petitioner respectfully requests that this Notice of Removal be filed in the records of the United States District Court for the Western District of Louisiana, State of Louisiana, effecting

the removal of the suit entitled "*Paula Le v. Unum Life Insurance Company of America*," Docket No. C-172252A, on the docket of the 27th Judicial District Court for the Parish of St. Landry, State of Louisiana.

XI.

Upon filing the Notice of Removal, petitioner will provide written notification of the Removal to the plaintiff and will file a copy of the Notice of Removal with the 27th Judicial District Court, St. Landry Parish, Louisiana. A copy of the state court notification is attached as **Exhibit "C."**

WHEREFORE, defendant, Unum Life Insurance Company of America, petitioner herein, respectfully requests that this Notice be deemed good and sufficient and that this cause be removed to this Court.

Respectfully submitted,

s/ Lauren A. Welch

LAUREN A. WELCH (La. Bar 17199)

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CERTIFICATE OF SERVICE

I hereby certify that on June 28, 2017, a copy of the foregoing pleading was filed electronically with the Clerk of Court using the CM/ECF system. Notice of this filing will be sent to opposing counsel by electronic mail to patm@mmrblaw.com.

s/Lauren A. Welch
LAUREN A. WELCH (La. Bar 17199)